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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 160104009-6617-02]

RIN 0648-BF65

International Fisheries; Tuna and Tuna-like Species in the Eastern Pacific Ocean; Fishing Restrictions Regarding Mobulid Rays

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-15-04 (*Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area*) of the Inter-American Tropical Tuna Commission (IATTC). These regulations prohibit any part or whole carcass of mobulid rays (*i.e.*, the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*)) caught in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. These regulations also provide requirements for the release of mobulid rays. This rule also revises related codified text for consistency with the recent amendments to the Tuna Conventions Act. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: This rule is effective August 1, 2016.

ADDRESSES: Copies of the Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2016-0035 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or *RegionalAdministrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS, West Coast Region, 562-980-4036.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

On April 22, 2016, NMFS published a proposed rule in the **Federal Register** (81 FR 23669) to implement Resolution C-15-04 adopted by the IATTC in 2015. The proposed rule contained additional background information, including information on the IATTC, the international obligations of the United States as an IATTC member, and the need for regulations. The 30-day public comment period for the proposed rule closed on May 23, 2016.

The final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by title II of Public Law 114-81. The recent amendments provide that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out U.S. international obligations under the Convention, including recommendations and decisions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS.

This rule implements Resolution C-15-04 for U.S. commercial fishing vessels used in the IATTC Convention Area and prohibits any part or whole carcass of a mobulid ray caught by vessels owners or operators in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. The rule provides that the crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must follow the requirements for release that are incorporated into regulatory text. Regulations at 50 CFR 300.25 already required purse seine vessels to release all rays, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. This rule revises regulations at 50 CFR 300.25 to specify that there are other regulatory release requirements specifically for mobulid rays, as described below.

The rule provides an exemption in the case of any mobulid ray caught in the IATTC Convention Area on a purse seine vessel that is not seen during fishing operations and is delivered into the vessel hold. In this circumstance, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the on-board vessel observer at the point of landing for recording purposes, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports, the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port or other authorized personnel. Mobulid rays that are caught and landed in this manner may

not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies.

In addition, this rule would also revise related codified text for consistency with the recent amendments to the Tuna Conventions Act made by Title II of Public Law 114-81 , effective on November 5, 2015 (Tuna Conventions Act of 1950). The rule updates the purpose and scope for 50 CFR part 300, Subpart C, by clarifying that the regulations in the subpart are issued under the “amended” authority of the Tuna Conventions Act of 1950, and that the regulations implement “recommendations and other decisions” of the IATTC for the conservation and management of stocks of “tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species” in the IATTC Convention Area. The rule also updates the definitions description at § 300.21 to clarify that the terms defined in § 300.2 include terms defined in the Antigua Convention. The rule also revises the description in § 300.25, which states how NOAA implements IATTC recommendations and decisions through rulemaking, to clarify that the Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard on behalf of the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out U.S. international obligations.

In addition, to improve the readability of the regulatory text, this action moves several paragraphs of regulatory text related to bycatch in § 300.25(e) to a new section (§ 300.27) that is dedicated to incidental catch and retention requirements. Several paragraphs in the prohibitions at § 300.24 are updated for consistency with the new section.

Public Comments and Responses

NMFS received three letters in response to the proposed rule during the 30-day comment period that closed on May 23, 2016. The first letter, submitted jointly by three non-governmental organizations (NGOs), supported the proposed regulations and also requested that the United States work to close the exemption in the IATTC Resolution C-15-04 for developing small-scale and artisanal fisheries. NMFS responds to that comment below. The second letter, from a member of the public, supported the proposed regulations. A third letter, submitted jointly by two NGOs, provided seven documents containing biological information and further conservation recommendations about mobulid rays in the IATTC Convention Area but did not directly express a view on the proposed regulations. These documents seem to support the intent of the proposed rule.

Comment: We remain concerned about the broader exemptions allowed under Resolution C-15-04 that exempt small scale fisheries from mobulid ray retention bans. We urge the United States to work to close loopholes and otherwise improve mobulid ray protection, data collection, and related capacity building at future meetings of the IATTC.

Response: As described in the preamble of the proposed rule, the requirements of Resolution C-15-04 do not apply to small-scale and artisanal fisheries that fish exclusively for domestic consumption and that are flagged/registered by a developing Member or Cooperating Non-Member. Because the United States is not a developing nation, this exclusion was not implemented in U.S. regulations. NMFS recognizes the conservation concerns expressed by the commenter about providing this exemption that allows certain other IATTC Members or Cooperating Non-Members to continue taking mobulid rays. However, NMFS also acknowledges that the IATTC took an important first step in conservation measures for mobulid rays and that the IATTC can work to strengthen these measures in future meetings.

Changes from the Proposed Rule

In § 300.27 (g), the description of responsible government authority in U.S. ports was revised to clarify that the responsible governmental authority in U.S. ports is the NOAA Office of Law Enforcement divisional office nearest to the port. Previously the language specified the Western Division and Pacific Island Division, which may be too limiting to vessels landing in ports outside of these regions. In addition, the language within the same paragraph is revised to clarify that the observer should be shown the whole mobulid ray to the observer at the point of landing specifically for recording purposes rather than for other purposes.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Tuna Conventions Act and other applicable laws. This rule has been determined to be not significant for purposes of Executive Order 12866. Additionally, although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), existing collection-of-information requirements still apply under the following Control Numbers: 0648-0148, 0648-0214, and 0648-0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. On December 29, 2015, the NMFS issued a final rule establishing a small business size

standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

The certification under the Regulatory Flexibility Act was developed for this regulatory action at the proposed rule stage using SBA's former size standards. Thus, NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard could result in a few less commercial finfish businesses being considered small. However, NMFS has determined that the new size standard does not affect its underlying analysis and, thus, NMFS has not changed its decision to certify this regulatory action.

As described in the proposed rule, the small entities that would be affected by this action are U.S. commercial fishing vessels that may be used for IATTC fisheries in the IATTC Convention Area (i.e., purse seine, longline, and large-mesh drift gillnet (DGN)). There are two components to the U.S. tuna purse seine fishery in the EPO: (1) purse seine vessels with at least 363 metric tons (mt) of fish hold volume (size class 6 vessels) that typically have been based in the western and central Pacific Ocean, and (2) coastal purse seine vessels with smaller fish hold volume that are based on the U.S. West Coast. As of July 2016, there are 15 size class 6 purse seine vessels on the IATTC Regional Vessel Register. In recent years, size class 6 purse seine

vessels have landed most of the yellowfin, skipjack, and bigeye tuna catch in the EPO. Estimates of ex-vessel revenues for size class 6 purse seine vessels in the IATTC Convention Area since 2005 are confidential and may not be publicly disclosed because of the small number of vessels in the fishery. Since 2010, fewer than three coastal purse seine vessels targeted tunas; therefore, their landings and revenue are confidential. In 2014, eight coastal purse seine vessels landed 1,413 mt of tuna (ex-vessel value of about \$1,535,000) in west coast ports. Participation in the large-mesh DGN fishery has declined significantly over the years, from 78 vessels in 2000 to 18 in 2013. The large-mesh DGN fishery primarily targets swordfish and to a lesser extent common thresher shark. During 2003 to 2014, the average ex-vessel value of the landings by the large mesh DGN fishery remained near \$1.8 million per year. U.S. West Coast vessels with deep-set longline gear primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally. U.S. West Coast-based longline vessels fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. Given this restriction, there has been fewer than three west coast-based vessels operating out of southern California ports since 2005; therefore, landings and ex-vessel revenue are confidential. Recently, the number of Hawaii-permitted longline vessels that have landed in west coast ports has increased from one vessel in 2006 to 14 vessels in 2014. In 2014, 621 mt of highly migratory species were landed by Hawaii permitted longline vessels with an average ex-vessel revenue of approximately \$247,857 per vessel.

NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner. This action is not expected to change the typical fishing practices of affected

vessels or the income of U.S. vessels because these vessels do not target mobulid rays, and do not commonly catch mobulid rays, even incidentally. The action is not expected to have a significant economic impact on substantial number of small entities. Accordingly, vessel income is not expected to be altered as a result of this rule. This action is not likely to increase the economic or record keeping and reporting burden on U.S. vessel owners and operators.

Further details on the factual basis for the certification were published in the proposed rule (April 22, 2016, 81 FR 23669) and are not repeated here. No comments were received regarding the certification. Therefore, the certification published with the proposed rule that states this rule is not expected to have a significant economic impact on a substantial number of small entities is still valid. As a result, a regulatory flexibility analysis was not required and none was prepared.

The Assistant Administrator for Fisheries has determined that good cause exists under 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effectiveness. If this rule were subject to the 30-day delay in effectiveness, the United States would not be able to satisfy its international obligations to implement legally binding IATTC Resolution C-15-04 by August 1, 2016, which is the effective date specified in the resolution. Additionally, the rule does not require the regulated entities to undertake actions (such as purchasing equipment, re-writing software, creating new reporting sheets, or training in new skills) in order to come into compliance with this rule prior to the effective date. As soon as the rule is filed with the Office of the Federal Register, notice will be sent to inform members of the tuna-fishing industry.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 26, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950, as amended, (Act) and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement recommendations and other decisions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the IATTC Convention Area.

3. In § 300.21, revise the introductory text and add a definition for “Mobulid ray” in alphabetical order to read as follows:

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), and the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, in the Act, or in the Antigua Convention, the definition in this section shall apply.

* * * * *

Mobulid ray means any animal in the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*).

* * * * *

4. In § 300.24, revise paragraphs (e), (f), (h), (t), (w), and (x) and add paragraphs (cc) and (dd) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4-6 using purse seine gear in the Convention Area as required under § 300.27(a).

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the brailing operation as required in § 300.27(b).

* * * * *

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.27(c).

* * * * *

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain on board, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.27(d).

* * * * *

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.27(e).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.27(f).

* * * * *

(cc) To retain on board, transship, store, land, sell, or offer for sale any part or whole carcass of a mobulid ray, as described in § 300.27(g).

(dd) Fail to handle or release a mobulid ray as required in § 300.27(h).

5. In § 300.25, revise paragraph (a), remove paragraph (e), and redesignate paragraphs (f) through (h) as (e) through (g), respectively.

The revision reads as follows:

§ 300.25 Eastern Pacific fisheries management.

(a) *IATTC recommendations and decisions.* The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, may promulgate such regulations as may be necessary to carry out the U.S. international

obligations under the Convention, Antigua Convention, and the Act, including recommendations and other decisions adopted by the IATTC.

* * * * *

6. Section 300.27 is added to subpart C to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

(a) *Tuna retention requirements for purse seine vessels.* Bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

(b) *Release requirements for non-tuna species on purse seine vessels.* All purse seine vessels must release all shark, billfish, ray (not including mobulid rays, which are subject to paragraph (g) of this section), dorado (*Coryphaena hippurus*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(c) *Sea turtle handling and release.* All purse seine vessels must apply special sea turtle handling and release requirements, as follows:

(1) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the sea turtle;

(2) If a sea turtle is entangled in the net, net roll shall stop as soon as the sea turtle comes out of the water and shall not resume until the sea turtle has been disentangled and released;

(3) If, in spite of the measures taken under paragraphs (c)(1) and (c)(2) of this section, a sea turtle is accidentally brought on board the vessel alive and active, the vessel's engine shall be disengaged and the sea turtle shall be released as quickly as practicable;

(4) If a sea turtle brought on board under paragraph (c)(3) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

(d) *Oceanic whitetip shark restrictions.* The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining on board, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(e) *Whale shark restrictions for purse seine vessels.* Owners, operators, and crew of fishing vessels of the United States commercially fishing for tuna in the Convention Area may not set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) if the animal is sighted prior to the commencement of the set or the attempted set.

(f) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release.

(g) *Mobulid ray restrictions.* The crew, operator, and owner of a U.S. commercial fishing vessel is prohibited from retaining on board, transshipping, storing, landing, selling, or offering for sale any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area, except as provided in the following sentence. In the case of any mobulid ray

caught in the IATTC Convention Area on an observed purse seine vessel that is not seen during fishing operations and is delivered into the vessel hold, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the on-board observer at the point of landing for recording purposes, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port, or other authorized personnel. Mobulid rays that are caught and landed in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies.

(h) *Mobulid ray handling and release.* The crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must use the release procedures described in the following two paragraphs.

(1) No mobulid ray may be gaffed, no mobulid ray may be lifted by the gill slits or spiracles or by using bind wire against or inserted through the body, and no holes may be punched through the bodies of mobulid ray (*e.g.*, to pass a cable through for lifting the mobulid ray).

(2) Applicable to purse seine operations, large mobulid rays must be brailed out of the net by directly releasing the mobulid ray from the brailer into the ocean. Large mobulid rays that cannot be released without compromising the safety of persons or the mobulid ray before being landed on deck, must be returned to the water as soon as possible, either utilizing a ramp from

the deck connecting to an opening on the side of the boat, or lowered with a sling or net, using a crane if available. The minimum size for the sling or net must be at least 25 feet in diameter.

[FR Doc. 2016-18083 Filed: 7/29/2016 8:45 am; Publication Date: 8/1/2016]